

Punishment as Penalty

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Abstract The paper's central focus is the 'duty' theory of punishment developed by Victor Tadros in *The Ends of Harm*. In evaluating the 'duty' theory we might ask two broad closely related questions: whether in its own terms the 'duty' theory provides a justification of the imposition of hard treatment or suffering on an offender; and whether the 'duty' theory can provide a justification of punishment. This paper is principally concerned with the second question, which stems from a significant difference between Tadros's 'duty view' of punishment, as opposed to more familiar theories that seek to justify punishment as essentially the imposition of a penalty for (purported) wrongdoing. In addressing this question I highlight this particular difference as problematic for Tadros's 'duty' theory. The issues concern Tadros's conception of punishment and the central features of his 'duty view': the claim that punishment of some offenders can be justified as the (enforced) fulfilment of a duty of protection that they owe principally to those whom they have wrongfully harmed.

Keywords Punishment · Duty · Justification · Penalty · Wrongful harm · Deterrence · Defence · Protection · Prevention

The imposition of hard treatment or suffering that is punishment is first and foremost a penalty for (purported) wrongdoing. I take this conception of punishment to be relatively uncontroversial. It motivates a number of straightforward distinctions and questions in relation to punishment in a very standard sense. For instance, we regard punishment as a penalty in distinguishing between incarcerating an offender as punishment, as opposed to an incarceration that is preventive detention. (Preventive detention cannot be distinguished from punishment, as might be suggested, simply on the grounds that the former is not intended to impose suffering on the offender. Instances of preventive detention could be so intended from malice, for example. Preventive detention *qua* preventive detention is not intended to impose suffering; insofar as any suffering involved in preventive detention is

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